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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 8, 9, and 52**

**[FAR Case 2009-024; Docket 2009-024; Sequence 2]**

**RIN: 9000-AM07**

**Federal Acquisition Regulation; Prioritizing Sources of  
Supplies and Services for Use by the Government**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule; correction.

**SUMMARY:** This document corrects the preamble to a proposed rule published in the Federal Register of June 14, 2011, regarding Prioritizing Sources of Supplies and Services for Use by the Government. This document adds an Initial Regulatory Flexibility Analysis which has been determined to be necessary since the initial publication of the proposed rule.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before **[Insert 30 days after publication in the FEDERAL REGISTER]** to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments in response to FAR Case 2009-024 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "FAR Case 2009-024." Select the link "Submit a Comment" that corresponds with "FAR Case 2009-024." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2009-024" on your attached document.
- Fax: 202-501-4067.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7<sup>th</sup> Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAR Case 2009-024, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Patricia Corrigan, Procurement Analyst, at 202-208-1963, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FAR Case 2009-024.

**SUPPLEMENTARY INFORMATION:**

DoD, GSA, and NASA published a proposed rule in the Federal Register at 76 FR 34634 on June 14, 2011, to amend

the FAR part 8. FAR part 8 requires Federal agencies to satisfy their requirements for supplies and services from or through a list of sources in order of priority. The proposed rule would amend FAR part 8 by revising FAR 8.000, 8.002, 8.003, and 8.004, eliminating outdated categories, and distinguishing between mandatory sources and non-mandatory sources for consideration. Public comments were received requesting the publication of Initial Regulatory Flexibility Analysis (IRFA) as part of the rule. Based on the comments, DoD, GSA and NASA determined it necessary since the initial publication of the proposed rule to issue an IRFA. Comments on the rest of the proposed rule will be addressed with the issuance of the final rule.

#### **Regulatory Flexibility Act**

The change may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, et seq., because the Initial Regulatory Flexibility Analysis (IRFA) is summarized as follows:

The objective of this rule is to clarify the order of preference for sources that must be considered, and to distinguish them from sources that should be considered where an agency is unable to satisfy requirements for supplies and services from mandatory sources.

The basis for this proposed rule is the Government Accountability Office (GAO) decision in the protest of Murray-Benjamin Electric Company, B-298481, 2006 CPD 129, September 7, 2006 at <http://www.gao.gov/decisions/bidpro/298481.pdf>. Based upon issues brought forward in the decision, it was determined that FAR Part 8 should be amended to eliminate confusion about the use of mandatory versus non-mandatory

sources. Two sections of the FAR are being amended to list only mandatory Government supply sources, and a new section is being added to encourage agencies to give consideration to using certain existing non-mandatory sources to leverage agency buying power and achieve administrative efficiencies that reduce costs and produce savings for our taxpayers. No new mandatory sources are proposed for consideration, only existing sources were included for informational purposes. The clarification is being made to assist both the public and the Federal contracting community by allowing them to better understand and distinguish between sources that are mandatory for use and those that are not mandatory. The non-mandatory sources (e.g., Federal Supply Schedules, Governmentwide acquisition contracts, multi-agency contracts, blanket purchase agreements (BPAs) under Federal Supply Schedule contracts (e.g., Federal Strategic Sourcing Initiative (FSSI) agreements)) in the new section are existing sources intended for use by multiple agencies, and existed prior to promulgation of the proposed change to the FAR. The proposed rule only reflects the practice and use of the existing non-mandatory sources throughout the Government. The existing non-mandatory sources are being listed prior to commercial sources, but agencies remain free to compete their requirements among commercial sources of supply, where it is in their best interest to meet their needs through an open-market procurement.

Because the rule clarifies regulations in FAR Part 8 on the use of existing mandatory and non-mandatory sources, it is estimated that the rule will apply to all entities doing business with the Government, regardless of business size. Based on Federal Procurement Data System reporting data, in Fiscal Year 2011, a Governmentwide total of 193,515 new awards were made to small businesses and other than small businesses. Of that total, 130,704 new award actions were made to small business entities. The remaining 62,811 award actions were made to other than small businesses. This clarification, consistent with the GAO decision in the Murray-Benjamin Electric Company protest (B-298481), clarifies existing FAR text regarding existing mandatory and non-mandatory sources. No new sources were added to the FAR and all contractors are encouraged to participate in the mandatory and non-mandatory source programs.

This rule does not add any new compliance requirements or information collection requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules.

No acceptable alternatives were determined. By providing clarification, the rule reduces the probability that applicable statutes, regulation, and policy will be misinterpreted or misapplied at the possible economic detriment of small entities.

The Regulatory Secretariat will be submitting a copy of the Initial Regulatory Flexibility Analysis (IRFA) to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2009-024) in correspondence.

**List of Subjects in 48 CFR Parts 8, 9, and 52**

Government procurement.

Dated: [August 31, 2012](#).

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